

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLANT**

77-1194

B
P/S

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----X
UNITED STATES OF AMERICA

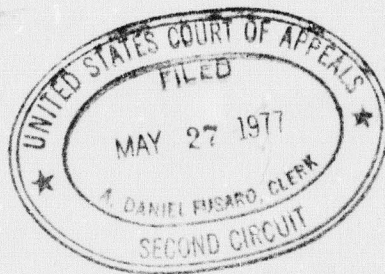
Plaintiff-Appelle

-against-

ROBERT A. RYAN

Defendant-Appellant
-----X

BRIEF FOR DEFENDANT-APPELLANT



MICHAEL IRA ASEN
217 Broadway
Suite 404
New York, New York 10007

To be argued by:
MICHAEL IRA ASEN

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----X
UNITED STATE OF AMERICA

Plaintiff-Appelle

-against-

77-1194

ROBERT A. RYAN

Defendant-Appellant

-----X

BRIEF FOR DEFENDANT-APPELLANT

This is an Appeal from a Judgment of Conviction Rendered
in the United States District Court for the Eastern District
of New York.

MICHAEL IRA ASEN
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PRELIMINARY STATEMENT

This is an appeal by the defendant-appellant from his conviction, after a trial by a jury, before the Honorable Henry J. Bramwell in the United States District Court for the Eastern District of New York on February 9, 10, 11, 1977 for the following charge:

That on June 10, 1976, he had knowingly received in his possession fifty (50) bags of coffee which had been stolen from Pier 6 Bush Marine Terminal, Brooklyn, New York, and had constituted part of a foreign shipment of freight.

INDICTMENT
76CR478(S)

THE GRAND JURY CHARGES:

On or about the 10th day of June, 1976, within the Eastern District of New York, the defendant, ROBERT A. RYAN, did knowingly, willfully and unlawfully receive and have in his possession approximately fifty (50) bags of coffee, having a value in excess of One Hundred (\$100.00) Dollars, which goods had been stolen from Pier 6 of the Bush Marine Terminal, Brooklyn, New York, while moving as a part of and constituting a foreign shipment of freight from Guatemala and Honduras to New York, the defendant, ROBERT A. RYAN, knowing the same to have been stolen.

(Title 18, United States Code, Section 659 and Section 2).

A TRUE BILL.

FOREMAN.

DAVID G. TRAGER
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

STATUTES INVOLVED

Title 18, United States Code, Section 659:

Whoever steals, or unlawfully takes, or carries away from any storage facility, platform, or wharf, with intent to convert to his own use, any goods or chattels moving as or which are a part of or which constitute a foreign shipment of freight; Whoever buys or receives or has in his possession any such goods or chattels, knowing the same to have been stolen, shall be fined not more than \$5,000.00 or imprisoned not more than 10 years or both.

Title 18, United States Code, Section 2:

(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces, or procures its commission, is punishable as a principal.

ANALYSIS OF THE TESTIMONY

The following witnesses were called by the Government:

James Kelly
Hugh Scott
Walter G. MacNeil
Thomas E. Schultze
Joseph Peter Reilly
Michael T. Kane
Robert J. Malone

James Kelly testified as follows: On June 10, 1976, he was employed by the McRobert's Detective Agency to be in charge of the security guards at Pier 6, Bush Marine Terminal, Brooklyn, New York. At approximately 11:50 A.M. he observed a U-Haul truck enter the pier through the main gate. He asked the gateman what the truck was doing on the pier. The gateman said, "he was ship's store but he didn't stop." (T.25)* Kelly observed the truck head towards pier 6 and started to follow it by riding down the pier on a motor scooter. Approximately 20-25 minutes later, he heard the noise of a hi-lo machine (air-lift machine) being operated by an unidentified person. Kelly observed that person jump off the machine and run around various bags of coffee. Kelly proceeded ahead inside the pier on the scooter for approximately 15-20 yards whereupon he observed the U-Haul truck which was parked. He observed a man (whom he identified as the defendant) closing the right rear door of the truck. Moreover,

*All numerals are references to trial transcript page.

Kelly observed bags of coffee beans stacked within the truck. Then, he observed the defendant get into the cab of the truck whereupon Kelly went to the front of the pier and notified the guards that "there was a truck on the pier that wasn't supposed to be on it".T.41

Subsequently, he went to the Customs Office and notified the customs agents of the truck. Then, he and Customs Agent MacNeil returned to the location of the truck and stayed by it. Thereafter, Kelly observed Customs Agent Schultze return from the pier with the defendant.

Kelly asked the defendant what the truck was doing on the pier. The defendant replied that it was his truck and that he had come looking for a ship with damaged cans of coffee. The defendant said he had no documents authorizing him to be on the pier. Then, the defendant was asked to open the truck which he did. At that point, Kelly left the area and returned to the main gate.

Hugh Scott testified as follows: On June 10, 1976, he was a security guard at Bush Marine Terminal, Brooklyn, New York employed by McRoberts Protective Agency. At approximately noontime, he was on guard duty outside of pier 6 on an area designated the "string piece". He observed a U-Haul truck coming

from the end of the pier on the "string piece". The truck stopped at the center of the pier, and then reversed "all the way back to the end of the pier again." T. 132 Scott lost sight of the truck.

He was not able to identify the driver of the U-Haul truck.

Walter G. MacNeil testified as follows: On June 10, 1976, he was employed by the United States Customs Service as a customs inspector for Bush Marine Terminal, Brooklyn, New York. At approximately noontime, he was in the Customs office at pier 6 with Chief Inspector Thomas Schultze. Kelly entered the office and engaged both inspectors in conversation. Thereafter, Kelly and MacNeil drove on pier 6 with a motor scooter. MacNeil was "looking for somebody trying to hide himself or somebody just standing around in amongst the cargo". T. 160.

Subsequently, Kelly stopped the scooter outside the pier on the "string piece" by a parked U-Haul truck. MacNeil looked inside the cab of the truck. "There was no one inside the cab, but I did see on the seat a long brown parcel." T. 162. The parcel contained 12 one pound bags of coffee.

A short time later, Schultze came to the U-Haul truck accompanied by the defendant. The defendant said the truck was his and that there was nothing in the truck. He was asked to open the truck which he did after a brief pause. The defendant

was assisted by MacNeil. Two pallets (wooden supports) of coffee bags were inside the truck. The defendant indicated that "he didn't know what it was or how it had gotten there". T. 173. Then, MacNeil asked the defendant what he was doing on the pier, "and he said to me that he had been told that he could come down to a ship called something like El Conquistador - he was vague as to the exact name - and buy cans of condemned or damaged coffee for some sum, I don't remember". T. 174. No such ship was at the pier.

Thereafter, MacNeil accompanied the defendant who drove the truck to the customs office. MacNeil sealed the truck. He indicated that 50 bags of coffee beans were seized from the truck. It was determined that the bags on the truck matched the bags described in the bills of lading held by the consignees.

Thomas E. Schultze testified as follows: On June 10, 1976, he was the Chief Inspector, United States Customs at Bush Marine Terminal, Brooklyn, New York. Shortly after noontime he observed the defendant walking slowly on pier 6. He spoke to the defendant about the U-Haul truck which was parked beside the pier and accompanied the defendant back to the truck.

Schultze inspected the contents of the truck and returned

to the office.

Joseph Peter Reilly testified as follows: On June 10, 1976, he was a special agent, United States Customs Service, Department of the Treasury.

At approximately 1:45 P.M. he met the defendant who was seated in the Customs office for pier 6, Bush Marine Terminal.

Special Agent Reilly and Special Agent Douglas Monroe proceeded to formally question the defendant. The defendant had signed the waiver of rights form. Then Special Agent Reilly advised the defendant "that he was not in custody right now, he was free to go if he wanted to leave right now, he could leave the room and walk out of the pier." T. 245.

The defendant and Special Agent Reilly had the following conversation:

"I asked Ryan if he was willing to answer questions.

He said yes, he would answer any of my questions.

I asked Ryan did he rent the U-Haul Truck containing the coffee parked outside on the pier.

He said that he did.

I had a rental agreement -- a copy of a rental agreement with me that was given to me earlier by a customs inspector named Dario Weber.

I showed Robert Ryan the copy of the rental agreement for the truck parked outside on the pier.

Ryan said that he had signed this agreement.

I then asked Ryan where he rented the U-Haul truck.

He told me he rented the truck in East Brunswick in New Jersey, at a Sunoco station at approximately 10 a.m. on June 10, 1976.

I asked Ryan what time did he get to the pier on June 10-- Pier 6, Bush Terminal.

Ryan told me that he entered the pier at approximately 11:45 a.m.

I asked Ryan if the truck was empty when he entered the pier, Pier 6, Bush Terminal.

Ryan said yes, it was empty.

I asked Ryan what he was doing on the pier-- what was his business that day on the pier.

He told me that he drove on the pier, to pick up damaged cans of coffee from a vessel called the EL CONQUISTADOR.

Ryan said that he parked his truck on the pier outside the cargo building, to look for the vessel the EL CONQUISTADOR.

He said he left the truck unattended for ten minutes.

I asked Ryan who he was supposed to see aboard the ship the EL CONQUISTADOR.

He told me the commissary man.

I asked him for the name of the commissary man.

He said he didn't have a name.

I asked him how much was he supposed to pay for the damaged cans of coffee.

He said fifty cents a pound. He was supposed to buy one or two pound cans of coffee.

I asked Ryan who told him to come to the pier to buy these damaged cans of coffee, how did he find out about these damaged cans of coffee that he was supposed to buy.

He told me that a friend of his in a bar called the Brunswick Grove, located in East Brunswick in New Jersey had told him about the cans of coffee.

Ryan told me that the individual, his friend, that he met in the bar knew he was out-of-work and told him that he could make some money by going to this vessel, the EL CONQUISTADOR. He was told to see the commissary man aboard the ship to purchase the cans of coffee.

I asked Ryan-- I asked Ryan what he was going to do with the cans of coffee after he had purchased them.

He told me he was going to sell them to friends of his in the bar or merchants that he knew. He said that he was going to sell the cans of coffee for a dollar or more.

I asked Ryan for the name of the individual in the bar,

his friend, who told him about the damaged cans of coffee that he could buy at the pier.

I asked him for the individual's name and Ryan refused to give me the name. He wouldn't give me the name of the individual who told him about the cans of coffee.

Ryan said he wanted to check on his own to see whether he was set up or not.

I asked Ryan if he had rented any U-Haul trucks prior to June 10, 1976, and he told me that he rented a U-Haul truck once to move a friend of his named Bobby Scott, writer.

Ryan said he moved-- he helped move his friend Bobby Scott from North Brunswick, New Jersey, to a studio apartment in Fort Lee, New Jersey.

Q Did you learn during the course of your discussion with Mr. Ryan whether he was employed or not at that time, on June 10, 1976?

A Yes, I did.

Q What did he tell you?

A Ryan told me he was unemployed presently. He works now as a part-time bartender." T. 246-249

Additionally, the defendant indicated that he had asked a sunbather on the pier where he could find the ship or damaged cans of coffee.

At approximately 4:30 p.m., Special Agent Reilly placed the defendant under arrest. -14-

Michael T. Kane testified as follows: He is a cargo claims manager for Viking Line Agency, 19 Rector Street, New York City. He identified and authenticated the two bills of lading in evidence. The shippers were located in Honduras and Guatemala, and the consignee was Socomex Coffee, Inc., 19 Wall Street, New York City.

Robert J. Malone testified as follows: He is a junior trader for Socomex Coffee, Inc. He indicated that the total value for the fifty bags of coffee beans in question as of June 10, 1976 totaled \$6,965.00.

The following witnesses were called by the defendant:

Alan Webb
Father Roderick Crispo

Both witnesses introduced character and reputation evidence.

This brief is submitted pursuant to the decision in Anders v. California, 386 U.S. 738, 18 L. ed. 2d 493, 87 S. Ct. 1396, reh. den. 388 U.S. 924, 18 L. ed. 2d 1377, 87 S. Ct. 2094 (1967).

CONCLUSION

THIS MOTION FOR AN ORDER RELIEVING COUNSEL SHOULD BE GRANTED.

Respectfully submitted.

MICHAEL IRA ASEN
Attorney for Defendant-Appellant
217 Broadway
Suite 404
New York, New York 10007

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----X
UNITED STATES OF AMERICA,

Plaintiff-Appellee

Docket No. 77-1194

-against-

AFFIDAVIT OF SERVICE

ROBERT A. RYAN

Defendant-Appellant
-----X

MICHAEL IRA ASEN, being duly sworn, deposes and says:

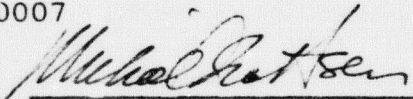
1. I am over the age of eighteen years, and not a party
to this action.

2. On May 27, 1977, I served the following papers:
NOTICE OF MOTION, AFFIDAVIT OF MICHAEL IRA ASEN, and ^{+ APPENDIX} BRIEF/ON
APPEAL for the Appellant.

3. Service was effected by depositing the required copies
of each paper, first class postage pre-paid, in the United States
Mails at New York City, New York addressed as follows:

Stanley Teitler, Esq.
Assistant United States Attorney
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York, 11201

A. Daniel Fusaro
Clerk, United States Court of Appeals
for the Second Circuit
Foley Square
New York, New York 10007


MICHAEL IRA ASEN

Sworn to before me
this 27th day of May, 1977.

LYNN A. MOSER
COMMISSIONER OF DEEDS
City of New York No. 4-1866
Commission Expires 1. 1978
Lynn A. Moser

